

6 Official Opinions of the Compliance Board 164 (2009)

Notice Requirements – Method – Public body has discretion in selecting appropriate media outlet

Minutes – Content – Detail required

Minutes – Preparation within reasonable time – Body that only meets periodically is responsible for ensuring minutes available with reasonable promptness

Compliance Board – Jurisdiction – Board limited to interpreting Open Meetings Act

September 8, 2009

J.H. Snider, Ph.D.

The Open Meetings Compliance Board has considered your complaint alleging that the School Board Nominating Commission for Anne Arundel County (“Nominating Commission”) has, among other things, violated the Open Meetings Act. Our concern, of course, is solely those matters governed by the Open Meetings Act. We have taken the liberty of reordering issues in your complaint for purposes of analysis.

For the reasons explained below, we find that the Nominating Commission did not violate the Open Meetings Act in the method by which it gave notice of certain meetings, although we are unable to address whether notice was provided reasonably in advance of the meetings. As to allegations that the Nominating Commission decided two specific matters that were never reflected in its minutes, we find that the allegations lack merit. However, due to the cursory nature of the Nominating Commission’s response, our ability to address the availability and timeliness of minutes was limited. We are unable to address other allegations in the complaint in that they concern matters not governed by the Open Meetings Act.

I

Notice of Meetings

A. Complaint and Response

The complaint revisited an issue we addressed in response to an earlier complaint filed against the Nominating Commission, that is, the adequacy of

the public notice of a meeting held on January 17, 2008.¹ Specifically, the complaint argued that the public body, not the complainant, should shoulder the burden of proof as to when notice was given.

The complaint also alleged that the Nominating Commission met on January 30, 2008, without giving the public notice of the meeting. According to the complaint, “[i]t was only months later, after [the Compliance Board] ruled on [a] January 23, 2008, Open Meetings Act violation, that the [Nominating Commission] posted notice of this meeting.”

The complaint also stated that the Nominating Commission “plays favorites in sending out notice of its meetings” and that it failed to adequately publicize its October 21, 2008, meeting. The complaint acknowledged that notice was provided to a reporter with *The Capital* newspaper. However, despite being told that the complainant would receive notice “on an equal basis with the *Capital* and other media,” the complainant stated that notice was never provided. Furthermore, the complaint alleged that notice of the October 21 meeting was posted on the Nominating Committee website after the meeting occurred.

Joshua Greene, Chairman of the Nominating Commission, submitted a timely response on the Nominating Commission’s behalf. The response did not revisit the January 17, 2008, meeting nor did it address the meeting held October 21, 2008. As to the January 30 meeting, the chairman noted that it was his recollection that “the Capital newspaper was contacted to run in the next available edition an announcement of [the Nominating Commission’s] January 30 meeting.” According to the response, this process was consistent with a communications plan discussed at a meeting held January 23 and the chairman delegated the responsibility to Commissioner Sandie Anderson. The response also reiterated that the Nominating Commission was still working with the Anne Arundel County School system on securing an official website and e-mail capability.

¹See 6 *OMCB Opinions* 32 (2008). While we discourage public bodies from contacting representatives of the media as the sole method of giving notice in advance of a meeting, we concluded that the Nominating Commission’s contacting *The Capital* newspaper, a primary news source in Anne Arundel County, satisfied the requirements of the Act. 6 *OMCB Opinions* at 33, n. 3. However, as we did not know when the meeting date was selected, we declined to express an opinion as to whether the timing of the notice was reasonable. 6 *OMCB Opinions* at 33.

B. Analysis

Before holding a meeting that is governed by the Act, “a public body shall give reasonable advance notice of the session.” § 10-506(b).² Had the only notice of the January 30 meeting been issued subsequent to the meeting, clearly it would have been a violation of the Open Meetings Act. However, we are told that a member of the Nominating Commission contacted *The Capital* newspaper in connection with the meeting. For the reasons expressed in our earlier opinion, this *method* of providing notice satisfied the minimum requirements of the Act. § 10-506(c)(2); 6 *OMCB Opinions* 32, 33 (2008). The response did not indicate *when* the meeting was scheduled or when *The Capital* was actually contacted. Thus, we express no opinion as to whether the notice was reasonably in advance of the meeting.

With respect to the January 17 meeting, we decline to revisit the adequacy of the notice. We note that, while neither the complainant nor the public body has the burden of proof in a complaint filed with the Compliance Board, it is normally the public body, not the complainant, that has the information necessary to allow evaluation of whether a violation of the Act occurred. 6 *OMCB Opinions* 63, 67 n. 4 (2008); 6 *OMCB Opinions* 69, 72 (2009). The Open Meetings Act mandates that a public body retain a copy of notice for a minimum of one year from the date of the meeting. § 10-506(d). To be sure, here notice of the January 2008 meetings apparently was not provided in writing.³ Nevertheless, it would have been prudent for the member of the Nominating Commission who actually contacted *The Capital* to have memorialized the date and time of contact.

With respect to the October 21, 2008, meeting, the complaint acknowledged that *The Capital* was notified. We do know whether any other media outlets were notified. We simply note that the Open Meetings Act allows public bodies considerable discretion in terms of selecting the method in which notice of meetings is provided, including what, if any, media outlets are contacted. § 10-506(c). Assuming that the notice to *The Capital* was

²All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

³While verbal notice to a reporter may be sufficient in some circumstances, the Act makes clear that, “[w]henever reasonable” notice is to be in writing.

provided in a timely manner and included the detail required under the Act, the Act's minimal notice requirements would have been satisfied.⁴

II

Minutes

A. Complaint and Response

The complaint alleged that the Nominating Commission violated the Open Meetings Act requirements with respect to the keeping of minutes. Specifically, it was alleged that minutes do not reveal when the Nominating Commission voted to select the Chairman of the Nominating Commission as its spokesperson or when the policy on how the Nominating Commission selects nominees was adopted. The complaint also included a general allegation that minutes of the Nominating Commission's administrative meetings are "skeletal at best and omit critical discussions ..." The complaint suggested that minutes reflect, at a minimum, "the names of those who asked questions or commented and the gist of what they said." The complaint further alleged that the Nominating Commission has failed to post minutes of its meetings in a timely fashion and that, as of the date of the complaint (May 12, 2009), minutes of public hearings held February 11, April 21, and April 27, 2009, had not been posted.

The response stated that, "[a]s a general proposition the Commission attempts to capture all of its official actions in its meeting minutes." As to the spokesperson allegation, the response noted that at its February 20, 2008, meeting bylaws were adopted that designated the chairman as the Nominating Committee's official spokesperson⁵ and referred us to the minutes. As to the

⁴The complaint also suggested that documents posted on a website include a date and also reflect the date that the document was actually posted. However, the Compliance Board has no authority to require this action. § 10-502.5(i)(2). We note, however, that as part of our last annual report to the Governor and General Assembly, we recommended legislation that would have required meeting notices provided on a website reflect the date the notice was posted. See *Sixteenth Annual Report of the Open Meetings Compliance Board* pp. 5-6 (October 2008), available at <http://www.oag.state.md.us/Opengov/Openmeetings/cboardannreport.pdf>. However, this suggestion was not enacted.

⁵Article V of the Nominating Commission's bylaws provides, in part, that "[t]he Chairman shall be the official spokesperson for the Commission." Bylaws available at <http://www.aacps.org/sbnc/bylaws.pdf>.

nominee selection process, the response noted that the process was adopted at a May 5, 2008, meeting and, again, referred us to the applicable minutes.

As to the availability of minutes, the response noted that its process is to “adopt[] minutes at each subsequent meeting and then work[] with the webmaster at AACPS to have the said minutes loaded to the [Nominating Commission’s] website ...” The Nominating Commission “endeavors to have its officially adopted minutes loaded to its website at the earliest possible occasion.”

B. Analysis

The minutes of the Nominating Commission’s February 20, 2008, meeting reflect that the bylaws, as presented, were approved with correction. Similarly, the minutes of the May 5, 2008, reflected a decision to amend the voting procedures that were adopted February 22, 2008, in order to require a supermajority vote to nominate a candidate. Thus, with respect to the complainant’s two specific examples, we find that the allegations lack merit.

In terms of the general allegation concerning the detail reported in its minutes, the Nominating Commission simply deferred to the Compliance Board. The complaint specifically identified meeting dates for which minutes were not timely available. The response did not specifically address this matter. Given the specificity of the complaint in this respect, the Nominating Commission had an obligation to respond to these allegations. The Nominating Commission failed to do so. This failure is in no way condoned by the Compliance Board. Nevertheless, some general observations are in order.

Minutes of every meeting governed by the Act must be prepared, even if the meeting is limited to procedural matters. 5 *OMCB Opinions* 50, 53 (2006). The Open Meetings Act does not require a public body to post its minutes on a website. 3 *OMCB Opinions* 340, 343 (2003). However, the Act does make clear that minutes of open meetings “are public records and ... open to public inspection during ordinary business hours.” § 10-509(d). Because the Nominating Commission has no central office, the practice of making minutes available online appears an appropriate one.

In terms of detail required in minutes of open meetings, the Act requires that minutes reflect each item that the public body considered, the action taken on each item, and each recorded vote. § 10-509(c)(1). These are minimum requirements; the Act does not limit matters that a public body might include

in its minutes. § 10-509(a)(2); 1 *OMCB Opinions* 63, 64 (1994). We have previously advised that each item considered is to be described in sufficient detail so that a member of the public who reviews the minutes can an appreciation of the issue under discussion. 6 *OMCB Opinions* 110,113 (2009). Certainly a transcript of a meeting is not required, although a transcript would likely reflect all the information that the Act requires. 1 *OMCB Opinions* 162, 165 (1996); 6 *OMCB Opinions* at 113. While a public body may record its meetings if it chooses, a recording does not satisfy the Act's requirement for written minutes. § 10-509(b).

The Act requires that the minutes of a meeting be prepared “[a]s soon as practicable” after a meeting. As a general rule, we have advised that minutes are to be available on a cycle paralleling a public body's meetings. 6 *OMCB Opinions* 47, 51 (2008). However, we have also recognized that special circumstances might justify a delay. *Id.* However, when a public body only meets periodically, it is obligated to find a method to ensure that minutes are available to the public with reasonable promptness. 6 *OMCB Opinions* 85, 88 (2009).

III

Miscellaneous

A significant portion of the complaint focused on issues that simply are not governed by the Open Meetings Act. The Open Meetings Compliance Board is only authorized to address matters governed by the Act; we have no authority to address matters governed by other laws, including the Public Information Act. 5 *OMCB Opinions* 1 n. 1 (2006). The Open Meetings Act addresses access only to records that a public body is *required* to maintain under the Act.⁶ A public body does not violate the Open Meetings Act by deviating from an announced agenda since an agenda is not required as part of a meeting announcement. 4 *OMCB Opinions* 168, 172 (2005). Finally, the Open Meetings Act does not prohibit the Nominating Commission from collecting information about candidates outside the course of a meeting. Thus, we express no views as to other allegations or comments included in the complaint. The complaint also requested that we address not only “the letter”

⁶As noted above, a public body is not required to record its meetings. Nevertheless, if it chooses to record a meeting, we note that the Open Meetings Act does require that a copy by the recording be retained for at least one year. § 10-509(e). However, unlike access to minutes, public access to a recording would be governed by the Public Information Act.

of the Act, but “the spirit of the Act as well.” It is important to remember, however, that our role in reviewing a complaint is to evaluate whether a public body has satisfied the minimum requirements of, and thus complied with, the provisions of the Act, 6 *OMCB Opinions* 127, 139 (2009).

IV

Conclusion

We find that the Nominating Commission did not violate the Open Meetings Act in the method by which it gave notice of certain meetings, although we are unable to address whether notice was provided reasonably in advance of the meetings. As to allegations that the Nomination Commission failed to record certain specific actions in its minutes, we find that the allegations lack merit. However, due to the cursory nature of the response, our ability to address the availability and timeliness of minutes was limited. We are unable to address other allegations in the complaint in that they concern matters not governed by the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio Morales, Esquire